

point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

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(4) *Treatment processes considered as mining.* The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

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(F) In the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(b) *Election.* Under section 302(c)(2) of the Act, the taxpayer, in the case of calcium carbonates or other minerals when used by him in making cement, may elect to apply the provisions of section 613(c) (2) and (4) of the 1954 Code as amended in lieu of the corresponding provisions of prior law. The taxpayer must make the election in accordance with § 1.9003-4 on or before November 15, 1960, and the election shall become irrevocable on November 15, 1960.

(c) *Years to which the election is applicable.* If the election described in paragraph (b) of this section is made by the taxpayer, the provisions of section 613(c) (2) and (4) as amended by section 302(b) of the Act apply to all taxable years beginning before January 1, 1961, in respect of which:

(1) The assessment of any deficiency,

(2) Refund or credit of any overpayment,

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on September 14, 1960, by the operation of any law or rule of law. The election also applies to taxable years beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before September 14, 1960.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003-2 Effect of election.

(a) *In general.* If a taxpayer makes the election described in paragraph (b) of § 1.9003-1, he shall be deemed to have consented to the application of section 302(b) of the Act with respect to all

taxable years to which the election applies. Thus, subparagraph (F) of section 613(c)(4) of the Internal Revenue Code of 1954 as amended must be applied in determining gross income from mining for the taxable years to which the election applies (including years subject to the Internal Revenue Code of 1939) whether or not the taxpayer is litigating the issue. Further, the election shall apply to all calcium carbonates or other minerals mined and used by the taxpayer in making cement.

(b) *Effect on gross income from mining.* The election is only determinative of what constitutes “mining” for purposes of computing percentage depletion and has no effect on the method employed in determining the amount of gross income from mining. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of section 302(b) of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003-3 Statutes of limitation.

Under section 302(c)(2) of the Act, the period within which the assessment of any deficiency or the credit or refund of any overpayment attributable to the election may be made shall not expire sooner than 1 year after November 15, 1960. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, is not prevented on September 14, 1960, the time for making assessment or credit or refund shall not expire for at least 1 year after November 15, 1960, notwithstanding any other provision of law to the contrary. Even though assessment of a deficiency is prevented on September 14, 1960, if commencement of a suit for recovery of a refund under section 7405 of the Code may be made on such date, then any deficiency resulting from the election may be assessed